IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 317 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANU RANCHHOD TALPADA VAGHARI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR CHIRAG M PAWAR, appointed by Legal Aid Committee for Appellant
MR RC KODEKAR APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 24/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in this appeal filed under Section 374 of the Code of Criminal Procedure ('the Code' for short) is to the correctness of the judgment and order dated 12.2.1999, rendered in Sessions Case No.175 of 1998, by the learned Additional Sessions Judge, District Kheda at Nadiad, by which the sole appellant ('the accused' for short) has been convicted for commission of the offence under Section 302 of the Indian Penal Code ('IPC' for short) and sentenced to R.I. for life and fine of Rs.2,000/- and in default of payment of fine, further R.I. for three months.

2. The prosecution case, as disclosed from the FIR and unfolded during trial, is as under:

2.1. P.W.1, Govindbhai Mohanbhai Talpada, who lodged the complaint and the accused, were residing in the neighbourhood in the area known as Malav Bhagol, Vaghari Vas of Petlad Town. Govindbhai had a love affair with Sharda, daughter of the accused, who is married. The

accused had warned him about the said relation when he came to know about it. However, Govindbhai continued the said illicit relationship with Sharda. Because of the illicit relation Govindbhai had with his daughter Sharda, the accused was very much annoyed with Govindbhai and his family and wanted to take revenge. As per further case of the prosecution, Mohanbhai Fulabhai, father of Govindbhai, and the accused were guarding the fields of Kesarising Jesingbhai Ajana and Manharbhai Kubersing Ajana during the night and at night hours the accused and Mohanbhai used to go together and sleep in a shelter erected in the field.

2.2. As per further case of the prosecution, on 25.5.1998, at about 10 P.M., the accused, in furtherance of his motive to take revenge against the complainant or any of his family members, went to call Mohanbhai at his residence and took him to the fields situated on Dharmaj Road, Petlad and thereafter, during night hours, in

between 25.5.1998 10 P.M. and 26.5.1998 at 7.00 A.M. killed Mohanbhai Fulabhai when he was asleep by cutting his throat with butcher's knife. Mohanbhai and his family members waited for the arrival of Mohanbhai in the morning but as he did not return upto 7 A.M, Govindbhai went to the field in search of his father. He saw the dead body of his father lying in a pool of blood in the field. He immediately came back and informed his mother Kashiben about the murder of his father Mohanbhai. Thereafter Govindbhai went to Petlad Town Police Station and lodged the complaint which is on record at Ex.11. The said complaint is registered by Madhavsinh Padsinh Vasava, P.I. of Petlad Town Police Station vide CR No.I-75/98 against the accused for commission of offence under Section 302 IPC.

2.3. On registration of the complaint, P.I. Madhavsinh Padsinh Vasava, held inquest on the dead body of Mohanbhai and thereafter sent the dead body for autopsy. Panchnama of the scene of

the offence was prepared, blood stained earth from the place of offence was collected, slipper, bush-shirt, etc., of the deceased were recovered. He got the place of offence photographed and also seized the muddamal knife. He recorded the statements of the witnesses and arrested the accused. On receipt of the autopsy report and report from FSL and as sufficient incriminating evidence was found against the accused for commission of the offence punishable under Section 302 IPC, the accused was charge-sheeted in the Court of learned JMFC, Petlad.

2.4. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the learned JMFC, Petlad committed the case to the Court of Sessions, District Kheda at Nadiad.

2.5. The learned Additional Sessions Judge, Nadiad, to whom the case was made over for trial against the accused, framed the charge against

the accused for commission of the offence punishable under Section 302 IPC. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried and thereupon the learned Additional Sessions Judge, Nadiad put him to trial in Sessions Case No.175 of 1998.

2.6. In order to prove the charge levelled against the accused, the prosecution has examined in all 10 witnesses and relied upon their oral testimony, the details of which have been given in paragraph 4 of the judgment which are as under:

PW No	Name	Ex.No	Page
1.	Govindbhai Mohanbhai Talpada	10	37-42
2.	Kesarising Jesingbhai Ajana	2	83-86
3.	Maganbhai Shivabhai	24	87-88
4.	Kashiben Mohanbhai	25	89-90
5.	Kalpesh Pratapsing Ajana	26	91-92
6.	Kuberbhai Naranbhai	31	103-104
7.	Budhabhai Madhabhai	34	109-110
8.	Bhikhabhai Ramabhai	35	111-112

PW No	Name	Ex.No	Page
9.	Madhavsinh Padsinh Vasava	36	113-118
10.	Dr. Dattatrey Radhakrishna Khadayte	39	127-128

2.7. To prove the culpability of the accused, the prosecution has also produced a number of documents and relied upon the contents of the same, the details of which are mentioned in para 5 of the impugned judgment and order, which are as under:

S.No.	Particulars	Ex.No
1.	Complaint filed by Govindbhai Mohanbhai Talpada	11
2.	Inquest Panchnama	12
3.	Panchnama with regard to physical state of the accused	13
4.	Panchnama of dead body of Mohanbhai	14
5.	Extract of record of right of S.No.516	15
6.	Police report for Post mortem	16
7.	Post Mortem notes	17
8.	Forwarding letter for sending muddamal to FSL	18
9.	Receipt of FSL	19
10.	Map of place of offence	20
11.	Letter of FSL	21

S.No.	Particulars	Ex.No
12.	Photographs of dead body at the place of offence	22
13.	Panchnama of place of offence	27
14.	Slips sighed by panch witnesses	32
15.	FSL report	37
16.	Serological report from FSL	38

2.8. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution in its entirety. He has denied the circumstances pointed out against him by the prosecution. However, he has neither offered any explanation nor did he examine any witnesses in his defence.

2.9. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial court came to the conclusion that all the circumstances from which the inference of guilt

is to be drawn are cogently and firmly established and they have definite tendency unerringly pointing towards guilt of the accused and that the circumstances taken cumulatively form a chain so compete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. The circumstances are complete and incapable and explanation of any other hypothesis than that of guilt of the accused and they are inconsistent with his innocence.

2.10. On the aforesaid finding, the trial court held that the complicity of the accused of murdering Mohanbhai has been duly established and consequently the trial court has convicted the accused for commission of offence under Section 302 IPC and sentenced to RI for life and fine of Rs.2000 i.d., further RI for three months, which has given rise to instant appeal at the instance of the accused.

3. In support of the appeal, Mr. Pawar, learned advocate appointed by the Legal Aid Committee for the accused, has contended that as per the prosecution case, the accused himself appeared before the Police station and made extra judicial confession before P.W.8, Bhikhabhai Ramabhai, PSO, Petlad Town Police Station, in presence of P.W.1, Govindbhai Mohanbhai Talpada and P.W.2, Kesarising Jesingbhai Ajana. Extra judicial confession, inherently is a weak piece of evidence and in instant case it was made before the police personnel and, therefore, it was not voluntary in nature and no reliance can be placed on the said piece of evidence.

3.1. So far as the evidence of 'last seen together' is concerned, i.e., the accused had taken deceased Mohanbhai with him on previous night, it does not get corroboration from the evidence of any independent witness. This is the evidence given by P.W.4, Kashiben Mohanbhai, who

is the widow of Mohanbhai. She is one of the near and dear relatives of the deceased and is a very interested witness in procuring conviction to the accused, and therefore, her evidence alone is not sufficient, in absence of other corroborative evidence, to establish the guilt of the accused. Therefore, according to him, the prosecution has failed to prove the charge levelled against the accused beyond reasonable doubt and a doubt is created in the prosecution case and hence the accused is entitled to get the benefit of doubt. He, therefore, submitted that the impugned judgment and order is against the evidence on record and the trial court has misdirected itself in reading the evidence of the prosecution witnesses and hence the impugned judgment and order convicting and sentencing the accused for the commission of the offence punishable under Section 302 IPC, deserves to be quashed and set aside by giving benefit of doubt and thereby acquitting the accused of the offence with which he was charged. He, therefore, urged

to allow the appeal.

4. Per contra, Mr. RC Kodekar, learned APP for the State of Gujarat, has submitted that the trial court has recorded a categorical finding about the guilt of the accused and the complicity of the accused is duly established by the prosecution on the basis of the extra-judicial confession made by the accused, last seen together, motive of the accused to commit the crime, conduct of the accused and the recovery of handkerchief of the accused stained with human AB Group blood, which is the blood group of deceased Mohanbhai, and therefore, there is no room of doubt in the prosecution case and the trial court has rightly recorded the finding with regard to the guilt of the accused. According to him, since complicity of the accused in the commission of the crime of murder of Mohanbhai is established by the prosecution beyond doubt, the impugned judgment and order convicting and sentencing the accused for commission of offence of murder of

Mohanbhai does not call for interference of this court in this appeal. He, therefore, urged to dismiss the appeal.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. This court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. To prove the fact that the deceased Mohanbhai died a homicidal death, the prosecution has examined P.W.10, Dr. Dattatrey Radhakrishna Khadayte, Ex.39. He was the Medical Officer, Petlad Hospital, when the dead body of Mohanbhai was brought to him with inquest report for performing autopsy. He has deposed that he performed autopsy on the dead body of Mohanbhai and prepared autopsy report which is at Ex.17.

7. A conjoint reading of the oral evidence of P.W.10, Dr. Dattatrey and the autopsy report at Ex.17, according to us, there is no manner of doubt that the deceased died a homicidal death. The trial court has also recorded a categorical finding that the deceased Mohanbhai died a homicidal death. We, therefore, confirm the said finding recorded by the trial court.

8. Having held that the deceased died a homicidal death, the next question that requires

consideration of this court is as to whether the accused was the assailant and author of the injuries caused to deceased Mohanbhai.

9. In order to establish the guilt of the accused, the prosecution has mainly relied upon the evidence in the form of extra judicial confession made by the accused, last seen together, FSL report, motive of the accused to commit the crime, conduct of the accused prior to and after the crime allegedly committed by him.

10. In this connection, we shall first advert to the deposition of P.W.1, Govindbhai Mohanbhai Talpada, Ex.10. He has deposed that he is the son of deceased Mohanbhai. In his deposition he has further stated that the accused is residing just adjoining to their house. The accused has two daughters, elder daughter is Manjulaben and the younger is Shardaben. Both of them are married. He has further deposed that he had a love affair

with Shardaben and when the accused came to know about it, the accused had admonished him. He has further stated in his deposition that his father Mohanbhai used to guard the fields of Kesarising Jesingbhai and he used to go for work at 10 P.M. and return the next day morning at 6 O' clock.

10.1. He has further testified that on 25.5.1998 at 10 PM, the accused came to his house to call his father and Mohanbhai had accompanied the accused for guarding the fields at night. He has further deposed that as his father did not return in the morning, he went to the residence of the accused for making inquiry about his father but the accused was not there. He waited upto 7 AM for his father and thereafter searched for him in the field. He saw his father lying dead in the field near water feeder and his throat was cut. He found blood stains on the water feeder. He has further deposed that immediately he came back and informed about the

death of his father to his mother Kashiben. Persons residing in the locality came to know about the incident and they gathered at the place of the incident. He thereafter went to inform the owner of the fields and also to lodge complaint at the police station.

10.2. He has further deposed that when he went to the police station with Kesarising, the owner of the fields, he saw the accused sitting there. On asking, the accused informed him that he had cut the throat of his father and surrendered before the police with butcher's knife. After lodging the complaint, he returned to his house. On his way, he met one Maganbhai. Maganbhai told him that at night he had gone for watering his field and while returning at about 2'O clock at night he saw the accused with butcher's knife in his hand and he was found frightened. Maganbhai also told this witness Govindbhai that when he asked the accused as to where had he been, he

replied that he had gone to make a sacrifice and this witness found that the accused was very frightened.

10.3. He has identified in the Court, the lungi, slipper and bed sheet as that of his father. He has also identified muddamal Article No.9- shirt, Muddamal Article No.11 blue pant which were put on by the accused at the relevant time. He has also identified the butcher's knife which is at Article No.8.

10.4. He has been extensively cross-examined by the learned advocate of the accused. He has admitted in his cross-examination that Maganbhai is his grand father and Somabhai and Fulabhai are his uncles. He has also admitted that he has made no mention of money transaction between him and the accused in the complaint. He has stated in his cross-examination that he was mentally disturbed after knowing about the murder of his

father and he had given the complaint in a disturbed state of mind. This witness has denied the suggestion that he has falsely involved the accused as he had a love affair with Sharda, daughter of the accused. He has admitted in the cross-examination the fact that there was a love affair between him and Sharda.

10.5. On reappraisal of the evidence of P.W.1, Govindbhai Mohanbhai Talpada, it is clear that when he went to the police station along with Kesarising, the owner of the fields, he found the accused sitting in the police station, with knife. He has supported the case of the prosecution and has also stated about the motive behind the commission of crime by the accused. According to his testimony, he and Sharda, daughter of the accused were in love which was not liked by the accused and he has also attributed the reason that he had lent an amount of Rs.12,000/- to the accused for the purpose of

doing Mango business but the said amount is not returned to him by the accused and, therefore, the motive behind the murder of Mohanbhai, according to his deposition, is the above two grounds. He has also supported the case of the prosecution that the deceased was last seen together with the accused because the accused had been to his house on the previous night and called his father to accompany him to the field. It is also clear from his evidence that the accused had taken Mohanbhai from his house on the previous night and thereafter Mohanbhai did not return to his house.

11. The prosecution has thereafter examined and relied upon the evidence of P.W.2, Kesarising Jesingbhai Aajna, Ex.23. He has, inter alia, testified that he is owner of land bearing Survey No.516 admeasuring 3-A-19-Gunthas. He has further testified that half of the land belongs to his brother Kubersing. The crop in the said field was

being guarded by Mohanbhai Fulabhai and the accused was guarding the crop in the portion of the field of his brother Kubersing. At night the accused and Mohanbhai used to go to the field for guarding the crop and they used to sleep in the shelter erected at a height of 4 to 5 ft. in the field. He has further deposed that when he had gone to see his field at 8 AM, he saw a crowd near the passage of his field and at that time he knew that somebody had killed Mohanbhai near water feeder in the field. He had accompanied Govindbhai to the police station. When they were in the police station, the accused told that he had finished Mohanbhai with butcher's knife as his daughter's matrimonial life was disturbed because of the love affairs Govindbhai had with his daughter Sharda. He has further testified that while returning with Govindbhai, they came across one Maganbhai Shivabhai who told them that he had seen accused at 2 AM at night and that the accused had told him that he had gone to make a sacrifice. Kesarising has further testified that

the accused was having a butcher's knife with him when he was sitting in the police station. He has further testified that the accused killed Mohanbhai because there was a love affair between Sharda, the daughter of the accused and Govindbhai, son of deceased Mohanbhai, which the accused did not like.

11.1. In cross-examination he has denied the suggestion that Maganbhai and Shivabhai were in the crowd which had gathered near the field. He has further stated that Maganbhai has no land of his own but his father-in-law has a field. He has admitted that when he saw the accused in the police station, the butcher's knife was lying on the table.

11.2. On reappraisal of the evidence of P.W.2, Kesarising, it is clear that he is an independent witness and he has supported the prosecution case that the accused has, in his presence, made extra

judicial confession to the effect that he has killed Mohanbhai.

12. The prosecution has thereafter examined and relied upon the oral testimony of P.W.3, Maganbhai Shivabhai, Ex.24. He has, inter alia, testified that he had gone for watering his field at night but as there was no light he returned at about 2 to 2.15 AM. While returning he saw the accused with a butcher's knife. At that time the accused was put on a red bush shirt with lining and a gray pant and the accused was found to be very frightened. On asking, the accused informed him that he made a sacrifice. At about 6.30 A.M., Govindbhai came and informed him that his father is murdered. Thereafter he had gone to the field and saw the dead body of Mohanbhai near the water feeder. He has further testified that there was a love affair between Sharda, daughter of the accused and Govindbhai, son of deceased Mohanbhai. He has identified

Article No.11 and 9, respectively the pant and shirt of the accused. He has also identified Article No.8 knife. He has further deposed that the accused and deceased used to sleep at night in same shelter in the field.

12.1. In cross-examination he has stated that Mohanbhai and the accused were neighbours. He has denied the suggestion that the accused was not guarding the crop of anyone. He has clarified that he had gone for watering the field belonging to his father-in-law. He has also denied the suggestion that there was no enmity between the accused and deceased Mohanbhai.

12.2. This witness has also supported the prosecution case that he had seen the accused with butcher's knife in his hand at night hours on the fateful night.

13. The prosecution has thereafter examined and relied upon the oral testimony of P.W.4, Kashiben Mohanbhai, Ex.25. She is the widow of Mohanbhai and the mother of the complainant. She has, inter alia, deposed that Mohanbhai used to go to guard the field in which Millet is cultivated. She has testified that the accused is their neighbour. She has further stated in his deposition that on the fateful night, when she and her family members were watching T.V. programme, the accused came to their house and asked Mohanbhai to accompany him to the field. Initially Mohanbhai had shown his unwillingness to go on that day but the accused insisted him to accompany him. In the morning she sent Govindbhai to search Mohanbhai as he did not return from the field at the usual time, and Govindbhai who had gone in search of his father, came back and informed her that he had been killed and the accused was also not available at his residence. She has further testified that people from the locality gathered in the field

where deadbody of Mohanbhai was lying. Thereafter her son Govindbhai along with Kesarising, the owner of the field, had gone to the police station to lodge complaint. The deceased Mohanbhai had put on a lungi and bush shirt when he last left for the field at night with the accused. She has identified the lungi and bush shirt, article Nos.2 and 7 respectively.

13.1. On reappraisal of the evidence of Kashiben, it becomes crystal clear that at the fateful night, the accused came at her house and asked Mohanbhai to accompany him to the field and the accused had taken Mohanbhai with him from his house when all the members of the family were watching T.V. programme.

14. The prosecution has thereafter examined and relied upon the oral testimony of P.W.5, Kalpesh Pratapsinh Ajana, Ex.26. He is a panch witness and in his presence the bloodstained sand, shirt,

mattress (*godadi*) etc., were recovered by drawing panchnama.

15. The prosecution has thereafter examined and relied upon the oral testimony of P.W.6, Kuberbhai Naranbhai, Ex.31. He is a police witness and at the relevant time he was working as head constable at Petlad Town Police station. He has testified that on 26.5.1998 he was in charge of police station as PSO and at that time police constable Budhabhai Madhavbhai brought one lungi and a bed sheet which were seized under a detailed panchnama and the panchnama is produced at Ex.14.

16. The prosecution has thereafter examined and relied upon the evidence of P.W.7, Budhabhai Madhabhai, Ex.34. He is also a police witness. He has deposed that he had taken the dead body of Mohanbhai Fulabhai to Petlad Government Hospital after inquest was over and handed over the dead

body to in charge doctor of the hospital and the clothes which were on the dead body were handed over to him and in turn he had produced all those clothes before PSO, who drew a panchnama of the same before they were seized.

17. The prosecution has thereafter examined and relied upon the evidence of P.W.8, Bhikhabhai Ramabhai, Ex.35. He was the PSO of Petlad Town Police station on 25.5.1998 from 20.00 hours to 8.00 hours in the morning next day. He has deposed that during this time, at about 7.30 AM one person came to the police station and told that he has committed a murder. He asked him to sit in the police station. He has further testified that when he was making inquiries from him, another person came to the police station, who informed him that the person who came first and was sitting in the police station, has murdered his father. Meanwhile, the Police Inspector of the police station came and he

informed him about the state of affairs. The person who came first had with him a butcher's knife with wooden handle. He has identified in the Court, the Article No.8, the butcher's knife, as that which was carried by the accused when he came to the police station.

17.1. In the cross-examination he has stated that he had not registered any offence as he was still making inquiries from the persons concerned and by that time, the P.I. came to the police station. He has further stated that he has not drawn any panchnama of the knife produced by the accused. He has further deposed that he has handed over everything to the PI as his duty was over at 8 A.M.

18. The prosecution has thereafter examined and relied upon the oral testimony of P.W.9, Madhavsinh Padsinh Vasava, P.I. of Petlad Town Police station and investigating officer, Ex.36.

He has, inter alia, testified that on 26.5.1998 Govindbhai Mohanbhai had given a complaint to him regarding murder of his father Mohanbhai and accordingly he registered the complaint. He has further testified that after registering the complaint, he went to the place of offence and made inquest panchnama of dead body and sent the dead body for post-mortem. He has further testified that the offence took place in the field of Kesarising where a crop of millet was standing. There was a shelter built on wooden pillars. There was also a water feeder near the place of offence. He has further stated in his deposition that he had drawn a panchnama of the place of offence, collected blood stained earth and control earth from that place. He had also got the dead body and place of offence photographed. The photographs are produced at Ex.22. He has recorded the statements of the concerned witnesses. He has also seized the clothes which were on the dead body at the time of post mortem. He had thereafter arrested the

accused at 15.30 hours on 26.5.1998 and seized the muddamal knife used by the accused for committing the crime. He has stated in his deposition that he has seized one shirt with lining, a gray pant and a handkerchief from the accused. All these muddamal were sent to FSL for analysis. He has also got a sketch of the place of offence prepared by Circle Officer, Petlad. The complaint Ex.11 was recorded by him and he put his signature beneath it. The panchnama at Ex.12, 13 and 27 are also bearing his signature. FSL report is produced at Ex.37 and the serological report is at Ex.38. Ex.18 is a forwarding note and Ex.19 is receipt of FSL in respect of muddamal. In Court, he has identified article No.1 – mattress, Article No.2 Shirt, Article No.5, slipper, Article No.6, bed-sheet, Article No.7 lungi, Article No.8, butcher's knife, Article No.9 shirt, Article No.10, handkerchief, Article No.11 pant.

18.1 In his cross-examination he has reiterated that the accused was arrested on 26.5.1998 at 15.30 hours and that he took over the charge of investigation after the complaint was registered. He has denied the suggestion that he has made a false case against the accused on the say of the witnesses.

19. A confession, in law, is a statement made by a person who has committed a crime, in which he or she acknowledges his or her guilt, if made in Court, it is judicial, if made anywhere else, it is extra judicial. The entirely voluntary, i.e., trustworthy confession is admissible in evidence; but if procured through force, inducement, threat, etc., is not admissible. The admissibility of the alleged extra judicial confession is a question to be decided by the Court; what weight it is entitled to is a question for the Judge to decide, on the facts and circumstances of the case.

19.1. In the instant case, the accused has murdered Mohanbhai when he was fast asleep. The extra judicial confession made by the accused is very much voluntary because it has come in evidence that when Kashiben, widow of Mohanbhai asked P.W.1, Mohanbhai to search for his father Mohanbhai as he did not return home even after passing of usual time of his return from the field, he went to the house of the accused but the accused was not found in his house as in fact, at that time the accused was sitting in the police station with the butcher's knife with him. Naturally, when his father and the accused were not found, P.W.1 went to the field in search of his father and at that time he found Mohanbhai lying dead. Thereafter immediately Govindbhai went to his house and informed his mother Kashiben that his father had been murdered and the accused was also not found in his house. Thereafter Govindbhai and Kesarising had gone to the police station for lodging complaint and when

they reached at the police station, they found the accused sitting in the police station with the butcher's knife with him. The sequence of happenings are quite natural as at that time the complainant did not know that the accused was the murderer of his father.

19.2. Even before registering the complaint the accused appeared before the police and had voluntarily made extra judicial confession that he has killed Mohanbhai. What made the accused to go to the police station and make extra judicial confession before registering complaint against him is known to him only and one thing certain from these facts is that the extra judicial confession made by the accused is voluntary and trustworthy and there is no question of obtaining the confession by administering threat, inducement or force.

20. The contention that the evidence of extra

judicial confession is a very weak piece of evidence,and no conviction can be based solely on the basis of extra judicial confession unless it gets corroboration either the form of independent witness or circumstantial evidence has no substance. Extra judicial confession is a confession made outside the normal course of legal proceedings or it may be stated that outside the jurisdiction of the Court. Though it is true that the evidence of extra judicial confession is a very weak piece of evidence, an absolute proposition of law that no conviction can be based on the basis of the extra judicial confession cannot be laid down. It cannot be ignored, when shown that such confession is made without any coercion, inducement or promise and is made before a person who has no reason to lie. In this connection, it would be appropriate to refer to the judgment of the Supreme court in the case of Guru Singh v. State of Rajasthan, (2001) 2 SCC 205. The Supreme Court, in paragraph 6 of the said reported decision, has observed as

under:

> “It is settled position of law that extra judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bhadur Singh v. State of Vindhya Pradesh (AIR 1954 SC 322) this Court again in Maghar Singh v. State of Punjab ((1975) 4 SCC 234) held that the evidence in the form of extra judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If

the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh v. State of M.P. ((1985) 4 SCC 26) this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witness who speak for such a confession. The retraction of extra judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of H.P. ((1991) 1 SCC 286) this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who committed the crime and is

admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized. To the same effect is the judgment in Baldev Raj v. State of Haryana ((1991) Supp (1) SCC 14). After referring to the judgment in Piara Singh v. State of Punjab ((1977) 4 SCC 452)

this Court in Madan Gopal Kakad v. Naval Dubey ((1992) 3 SCC 204) held that the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration."

21. Applying the principles laid down by the Supreme Court in the above referred judgment to the facts of the present case, according to us, evidence of P.W.1- Govindbhai, P.W.2 -Kesarising and P.W.8- Bhikhabhai before whom extra judicial confession is made by the accused with regard to committing murder of Mohanbhai, prior to his arrest, not only inspires confidence but the witnesses have deposed in such a manner that their evidence cannot be ignored. Besides this, as mentioned in the foregoing paragraphs, there is evidence to the effect that the deceased was last seen together with the accused, recovery of handkerchief of the accused stained with human

blood of AB group which tallies with the blood stains found on the mattress, bed sheet, etc,. in which deceased was lying and the fact that the blood group of deceased Mohanbhai was AB group and also the motive for commission of murder, taken together and the fact that nobody other than his guilty conscience insisted the accused to go to the police station and make extra judicial confession before lodging complaint in the police station, the complicity of the accused in murdering the accused is established beyond reasonable doubt.

22. It may be noted that legal evidence is not limited to the sworn testimonies of witnesses. Specific objects, when identified by oral testimony, may often be introduced in evidence when their existence or appearance tends to prove or disprove an alleged fact. Thus, weapons, clothes and documents may generally be introduced in evidence. In instant case, the prosecution has

proved the case against the accused not only by the oral testimonies of the witnesses but by introducing weapon used in the crime, clothes put on by the accused and deceased Mohanbhai, serological report and such other relevant documents also, the prosecution has established the guilt of the accused beyond reasonable doubt.

23. On overall reappraisal of the evidence of the witnesses examined by the prosecution, the following points are culled out:

(i) As per the evidence of P.W.1, Govindbhai and P.W.4, Kashiben, the accused had taken Mohanbhai with him on the fateful night and, therefore, the fact that Mohanbhai was in the company of the accused on the fateful night has been duly proved. It has also come in their evidence that after the accused had taken Mohanbhai with him at night, the dead body of Mohanbhai was found in the field. Thus, the fact that the accused was

last seen together with deceased Mohanbhai is fully proved.

(ii)P.W.3, Maganbhai Shivabhai had seen the accused near the place of offence at 2 O' clock at night with a knife and when Maganbhai asked the accused as to what was he doing there, the accused replied that he made a sacrifice and he found that the accused was very frightened. This shows the conduct of the accused after commission of the murder of Mohanbhai.

(iii) The accused himself appeared at the police station on the next day morning prior to his arrest and made voluntary statement before P.W.8, Bhikhabhai Ramabhai, PSO, and at that time PW.1, Govindbhai and P.W.2, Kesarising were also present in the police station. Therefore the extra judicial confession made by accused before P.W.8, in presence of P.W.1 and P.W.2 has been duly proved and it was made prior to his arrest

as, according to the evidence of P.W.9, Madhavsinh Padsinh Vasava, Investigating Officer, the accused was arrested at 15.30 hours on 26.5.1998 and as per the evidence of P.W.8, Bhikhabhai Ramabhai, PSO, P.W.1, Govindbhai and P.W.2, Kesarising, the accused made extra judicial confession in their presence at the police station.

(iv) Article No.10 is a handkerchief recovered from the accused. The serological report is at Ex.38. In the serological report, it is clearly mentioned that the said handkerchief had stained with human blood of AB group. It is also proved that the article No.1 mattress, article No.6, Bed sheet and the earth taken from the place of offence were also stained with human blood of AB group. Article No.1 - mattress and article No.6 bed-sheet indisputably belonged to to deceased Mohanbhai and the earth taken from the place of offence had also blood stains. It is

also clearly established that the blood group of deceased Mohanbhai was AB group. No explanation is offered by the defence as to how the handkerchief of the accused got stained with human blood of AB group, which is the blood group of the deceased Mohanbhai. It is not the case of the defence that his blood group is AB and because of some injury caused to him, the handkerchief was stained with his own blood.

(v) The conduct of the accused, prior to and after commission of the crime is also very relevant. His previous conduct of insisting Mohanbhai to accompany him on the fateful night and subsequent conduct of appearing voluntarily before the police in the police station with butcher's knife with him and making extra judicial confession before P.W.8 Bhikhabhai, PSO, P.W.1, Govindbhai and P.W.2 Kesarising, is also very relevant and raises an accusing finger towards him.

(vi) The prosecution has also attributed motive for the accused to kill the deceased. The first motive was that there was illicit relation between Govindbhai, son of the deceased Mohanbhai with Sharda, daughter of the accused, which the accused did not like and P.W.1, Govindbhai was demanding the amount of Rs.12,000 back from the accused which he had lent to the accused for doing mango business.

24. The above referred points which have been culled out on the basis of the evidence on record are so clinching and consistent with the hypothesis of the guilt of the accused and they are not capable of explaining any other circumstance but only the guilt of the accused and all the points are of conclusive nature.

25. On reappreciation, reevaluation, reanalysis

and threadbare scrutiny of the entire evidence on record, this court is of the firm opinion that the complicity of the accused in murdering deceased Mohanbhai is clearly established by the prosecution on the basis of the evidence in the form of extra judicial confession and other circumstances which have been discussed in detail in the foregoing paragraphs of this judgment. No ground is made out by the learned advocate of the accused to convince us to interfere with the said finding of fact recorded by the trial court. Therefore the finding recorded by the trial court, according to us, is just and proper and is required to be confirmed.

26. Seen in the above context, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the trial court and as the appeal lacks merit, it deserves to be dismissed

by confirming the judgment and order passed by the trial court.

27. For the foregoing reasons, the appeal fails and accordingly it is dismissed. Resultantly the judgment and order dated 12.2.1999 rendered in Sessions Case No. 175 of 1998 by the learned Additional Sessions Judge, District Kheda at Nadiad, convicting the accused for commission of offence punishable under Section 302 IPC and sentencing him to imprisonment for life and fine of Rs.2,000/- i.d., further R.I. for three months, is hereby confirmed and maintained.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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(karan)